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## NOTICE OF ALLOWANCE AND FEE(S) DUE

7590  
Thomas M. Schmitz  
900 Huntington Bldg.  
925 Euclid Ave.  
Cleveland, OH 44115

11/05/2002

EXAMINER

CHEUNG, WILLIAM K

ART UNIT

CLASS-SUBCLASS

1713

524-284000

DATE MAILED: 11/05/2002

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/839,049	04/23/2001	Gary P. Craun	10529	3640

TITLE OF INVENTION: ODOR FREE POLYLACTIC ACID MODIFIED AQUEOUS EMULSION PAINTS FREE OF VOLATILE COALESCING ORGANIC SOLVENT

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1280	\$300	\$1580	02/05/2003

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

## HOW TO REPLY TO THIS NOTICE:

## I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status is changed, pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above and notify the United States Patent and Trademark Office of the change in status, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check the box below and enclose the PUBLICATION FEE and 1/2 the ISSUE FEE shown above.

☐ Applicant claims SMALL ENTITY status.  
See 37 CFR 1.27.

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Box ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER:** Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

# **PART B - FEE(S) TRANSMITTAL**

**Complete and send this form, together with applicable fee(s), to: Mail Box ISSUE FEE  
Commissioner for Patents  
Washington, D.C. 20231  
Fax (703)746-4000**

**INSTRUCTIONS:** This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 4 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

**CURRENT CORRESPONDENCE ADDRESS (Note: Legibly mark-up with any corrections or use Block 1)**

7590 11/05/2002

Thomas M. Schmitz  
900 Huntington Bldg.  
925 Euclid Ave.  
Cleveland, OH 44115

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

## **Certificate of Mailing or Transmission**

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Box Issue Fee address above, or being facsimile transmitted to the USPTO, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/839,049 04/23/2001 Gary P. Craun 10529 3640

**TITLE OF INVENTION:** ODOR FREE POLYLACTIC ACID MODIFIED AQUEOUS EMULSION PAINTS FREE OF VOLATILE COALESCING ORGANIC SOLVENT

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
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nonprovisional NO \$1280 \$300 \$1580 02/05/2003

EXAMINER	ART UNIT	CLASS-SUBCLASS
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CHEUNG, WILLIAM K 1713 524-284000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the USPTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent) ☐ individual ☐ corporation or other private group entity ☐ government

4a. The following fee(s) are enclosed:

- ☐ Issue Fee
- ☐ Publication Fee
- ☐ Advance Order - # of Copies \_\_\_\_\_

4b. Payment of Fee(s):

- ☐ A check in the amount of the fee(s) is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Commissioner is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.

(Authorized Signature)

(Date)

**NOTE:** The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, D.C. 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

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09/839,049	04/23/2001	Gary P. Craun	10529	3640
7590	11/05/2002		EXAMINER	
Thomas M. Schmitz 900 Huntington Bldg. 925 Euclid Ave. Cleveland, OH 44115			CHEUNG, WILLIAM K	
			ART UNIT	PAPER NUMBER
			1713	

DATE MAILED: 11/05/2002

**Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)**  
(application filed on or after May 29, 2000)

The patent term adjustment to date is 135 days. If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the term adjustment will be 135 days.

If a continued prosecution application (CPA) was filed in the above-identified application, the filing date that determines patent term adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) system. (<http://pair.uspto.gov>)

Any questions regarding the patent term extension or adjustment determination should be directed to the Office of Patent Legal Administration at (703)305-1383.



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7590 11/05/2002

Thomas M. Schmitz  
900 Huntington Bldg.  
925 Euclid Ave.  
Cleveland, OH 44115  
UNITED STATES

EXAMINER

CHEUNG, WILLIAM K

ART UNIT

PAPER NUMBER

1713

DATE MAILED: 11/05/2002

**Notice of Possible Fee Increase on October 1, 2002**

If a reply to a "Notice of Allowance and Fee(s) Due" is filed in the Office on or after October 1, 2002, then the amount due may be higher than that set forth in the "Notice of Allowance and Fee(s) Due" since there may be an increase in fees effective on October 1, 2002. See Revision of Patent and Trademark Fees for Fiscal Year 2003: Notice of Proposed Rulemaking, 67 Fed. Reg. 30634, 30636 (May 7, 2002). Although a change to the amount of the publication fee is not currently proposed for October 2002, if the issue fee or publication fee is to be paid on or after October 1, 2002, applicant should check the USPTO web site for the current fees before submitting the payment. The USPTO Internet address for the fee schedule is: <http://www.uspto.gov/main/howtofees.htm>.

If the issue fee paid is the amount shown on the "Notice of Allowance and Fee(s) Due," but not the correct amount in view of any fee increase, a "Notice to Pay Balance of Issue Fee" will be mailed to applicant. In order to avoid processing delays associated with mailing of a "Notice to Pay Balance of Issue Fee," if the response to the Notice of Allowance and Fee(s) due form is to be filed on or after October 1, 2002 (or mailed with a certificate of mailing on or after October 1, 2002), the issue fee paid should be the fee that is required at the time the fee is paid. If the issue fee was previously paid, and the response to the "Notice of Allowance and Fee(s) Due" includes a request to apply a previously-paid issue fee to the issue fee now due, then the difference between the issue fee amount at the time the response is filed and the previously paid issue fee should be paid. See Manual of Patent Examining Procedure, Section 1308.01 (Eighth Edition, August 2001).

Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

# Notice of Allowability

Application No.

09/839,049

Examiner

William K Cheung

Applicant(s)

CRAUN ET AL.

Art Unit

1713

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to IDS (Paper No. 3).
2. ☒ The allowed claim(s) is/are 1-31.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the top margin (not the back) of each sheet. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

- |  |   |
|--|---|
| 1 <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                             | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)          |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 4 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____             |
| 5 <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. 3.       | 6 <input checked="" type="checkbox"/> Examiner's Amendment/Comment                  |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
|  | 9 <input type="checkbox"/> Other  |

**DETAILED ACTION**

***Restriction / Election***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1 to 31, drawn to a coating composition, classified in class 524, subclass 284.
  - II. Claims 32-47, drawn to a polymerization process, classified in class 524, subclass 352.
  
2. The inventions are distinct, each from the other because of the following reasons:

Inventions Group II and Group I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the process as claimed can be used to make other and materially different product such as non-ambient paint coating composition.
  
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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4. During a telephone conversation with Brian M. Kolkowski (Registration 36,847), on September 23, 2002, a provisional election was made with traverse to prosecute the invention of Group I, claims 1 to 31. Affirmation of this election must be made by applicant in replying to this Office action. Claims 32-47 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

#### **EXAMINER'S AMENDMENT**

6. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

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Authorization for this examiner's amendment was given in a telephone interview with Eileen T. Mathews (Registration No. 41,973) on October 30, 2002.

7. Claim 12 (line 2), replace "hydracrylic" with "hydroacrylic".
8. Cancel non-elected claims 32-47.

### **Allowances**

9. Claims 1-31 are allowed.
10. The following is an examiner's statement of reasons for allowance:

As of the date of this office action, the examiner has not located or identified any reference that can be used singularly or in combination with another reference including the closest prior art of Ohara et al. (US 5,880,254) and Floyd et al. (US 5,326,808) to render the present invention anticipated or obvious to one of ordinary skill in the art.

*The invention of claims 1-31 relates to an **ambient paint coating composition substantially free of volatile coalescing solvent**, the paint having a **film forming polymeric binder** comprising by weight: an aqueous emulsion polymeric film forming matrix polymer of copolymerized ethylenically unsaturated monomers; and **at least 3%***



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***of a low molecular weight poly(hydroxyl alkanoic acid) oligomer of copolymerized hydroxy alkanoic acid having from 2 to 4 carbon atoms and being an external modifier of the matrix polymer, the oligomer having number average molecular weight between about 300 and 10,000 and a  $T_g$  below 0°C, the oligomer having terminal alkyl aliphatic ester groups where the alkyl chain has from 3 to 20 carbon atoms, where the mixture of the oligomer and the matrix polymer are film forming and provide an air dry coating composition substantially free of organic coalescing solvent.***

The closest prior art Ohara et al. (abstract) teach a poly(alkanoic acid) or poly(lactic acid) having a weight average molecular weight of 1000 or less which overlaps with applicants' claimed molecular weight can be made. Since the molecular weight properties of the poly(lactic acid) as disclosed in Ohara et al. is substantially identical to the poly(alkanoic acid) as claimed, the examiner has a reasonable basis to believe that the claimed glass transition temperature of below 0 °C is inherently possessed by the disclosure to Ohara et al. However, Ohara et al. are silent on an ambient paint coating composition containing poly(alkanoic acid) and is substantially free of volatile coalescing solvent. Therefore, it would not be apparent to one of ordinary skill in the art to use the polylactic acid teachings in Ohara et al. to obtain applicants' ambient paint coating invention of claims 1-31.

Floyd et al. (abstract) disclose an aqueous ambient dry paint coating based on vinyl acetate matrix polymer containing an oligomer selected from a polyurethane or a polyester having a  $T_g$  below  $-20\text{ }^{\circ}\text{C}$  and a number average molecular weight between 200 and 20,000. However, Floyd et al. are silent on an ambient coating composition containing a poly(alkanoic acid) because Floyd et al. are clearly silent on a homopolymer or copolymer containing an aliphatic hydroxy carboxylic acid. According to applicants' specification (page 5, 3<sup>rd</sup> paragraph), a poly(alkanolic acid) oligomer and poly(hydroxy acid) oligomer are equivalent terms and are homopolymers or copolymers of aliphatic hydroxy carboxylic acid having from 2 to 4 carbon atoms. Therefore, it would not be apparent to one of ordinary skill in the art to use the ambient dry paint coating teachings of Floyd et al. to obtain applicants' invention of claims 1-31 which relates to an ambient paint coating composition containing a poly(alkanoic acid) oligomer.

In view of the reasons set forth above, the invention of claims 1-31 is allowed.

### **Conclusion**

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William K. Cheung whose telephone number is (703) 305-0392. The examiner can normally be reached on Monday-Friday 9:00AM to 2:00PM; 4:00PM to 8:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David WU can be reached on (703) 308-2450. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-5885 for regular communications and (703) 305-5885 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



William K. Cheung  
October 31, 2002



DAVID W. WU  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

**Notice of References Cited**

Application/Control No.

09/839,049

Applicant(s)/Patent Under

Reexamination

CRAUN ET AL.

Examiner

William K Cheung

Art Unit

1713

Page 1 of 1

**U.S. PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-5,326,808	07-1994	Floyd et al.	524/457
*	B	US-5,880,254	03-1999	Ohara et al.	528/483
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

**FOREIGN PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

**NON-PATENT DOCUMENTS**

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.